tice to himself without an evasion of the statute. He has only to seek the recovery of his money in equity instead of at law. It may be thought that equity has no jurisdiction where the only relief sought is the recovery of money got by fraud. But this is a misapprehension. Bills of this nature have been entertained from time immemorial. Indeed, at one time equity had exclusive jurisdiction of such cases. Now, a bill in equity, not being an action on the case, is not within the letter of the statute of James I. Equity, therefore, in giving effect to the statute follows its spirit, and refuses to apply it where its application would work injustice. The statute does not, therefore, begin to run against a defrauded plaintiff until he discovers, or ought, as a reasonable man, to have discovered, the fraud.[1]

MISTAKE. — The preceding observations apply to cases of money paid by mistake, if the receiver was aware of the mistake at the time of payment. If, however, the money was received innocently, the difficulty of working out the rights of the parties at law is increased. The cause of action must accrue either without, or else only after a demand. If no demand is necessary, the defendant may be unjustly condemned to pay the costs of an action although in no default and ignorant of any liability. If a demand must precede the cause of action, a plaintiff, by failing to make one, may postpone the running of the statute indefinitely. These difficulties are obviated in equity. For the plaintiff may proceed in equity without a demand, but if he acts oppressively, he must, although victorious in the suit, pay the costs. And, on the other hand, equity would refuse relief, if the plaintiff, knowing of his right, should allow the six years to go by.

It should be added that the common-law difficulties have been in great measure removed, in some jurisdictions, by special statutory provisions.

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the court. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

AGENCY — CONTRACT BY UNAUTHORIZED AGENT. — A person who contracts *bona fide*, as agent, without having in fact authority so to do, is personally responsible, on an implied warranty of his authority, to those who enter into agreement with him, believing that he is invested with such authority. *Farmers' Coöp. Trust Co.* v. *Floyd et al.*, 26 N. E. Rep. 110 (Oh.).

AGENCY — LIABILITY OF EMPLOYER FOR INJURY TO SERVANT — PROMISE TO REPAIR. — The fact that the plaintiff remained in defendant's employ after he had discovered that the risk thereof had been increased by defendant's negligence, will not preclude his recovery, where defendant promised to remove the threatened danger. *Rogers et al.* v. *Leyden*, 26 N. E. Rep. 210 (Ind.).

AGENCY — LIABILITY OF EMPLOYER FOR INJURY TO SERVANT — PROMISE TO REPAIR. — Plaintiff was injured in the course of his duty as superintendent of defendants' drawbridge. A few days before this accident, he had called the proper officer's attention to it, saying that somebody was likely to be hurt, but not complaining on account of his own increased danger. *Held*, that he assumed all risks of the employ-

[1] *Booth* v. *Warrington*, 4 Bro. P. C. (Toml. Ed.) 163; *South Sea Co.* v. *Wymondsell*, 3 P. Wms. 143; *Blair* v. *Bromley*, 5 Hare, 542; *Kirby* v. *Lake Co.*, 120 U. S. 130; *Gibbs* v. *Guild*, 9 Q. B. Div. 59.

ment, and was not excused because of the promise made to him to repair. *Lewis* v. *N. Y. & N. E. R.R. Co.*, 26 N. E. Rep. 431 (Mass.).

AGENCY — REVOCATION OF AUTHORITY — COMMISSION. — Where a real-estate agent is employed to find a purchaser, and there is no limit as to time, the principal may at any time revoke the authority. But if at the time of revocation the agent had a negotiation pending for the sale, which the principal afterwards consummates, the agent is entitled to his commission. *Knox* v. *Parker*, 25 Pac. Rep. 909 (Wash.).

BAILMENT — JUS TERTII — DEFENCE BY BAILEE. — Defendants held goods as warehousemen of plaintiffs, to whom they gave delivery-orders to plaintiffs or order. Plaintiffs sold the goods to a third party, and endorsed the delivery-orders to him, but up to the time of trial the orders had not been presented to defendants. Plaintiffs gave defendants notice that they cancelled the endorsement of the delivery-orders, and demanded the goods, which the defendants retained on the ground that plaintiffs had no title to the goods, refusing the demand *for their own account*, and not on behalf of the true owner of the goods. *Held*, that a bailee of goods cannot avail himself of title of a third person to the goods as a defence to an action by the bailor, except by further showing that he is defending the action on behalf and by the authority of such person. *Rogers, Sons & Co.* v. *Lambert & Co.* [1891], 1 Q. B. 318, Ct. of App. (Eng.).

BILLS AND NOTES — SEAL. — An instrument in the form of a negotiable promissory note, but with a scroll in which the word "seal" was written, after the signature of the maker, is a sealed instrument, and not a negotiable promissory note, though there is no reference to a seal in the body of the instrument. *Osborne & Co.* v. *Hubbard*, 25 Pac. Rep. 1021 (Ore.).

CONFLICT OF LAWS — GARNISHMENT — Where the defendant is a resident of Illinois, and wages due him were earned there, the *situs* of the debt is Illinois; and though the plaintiff may have garnished the debtor while he was in Iowa, and the Iowa court thus have jurisdiction of the garnishment suit, yet by virtue of the principles of comity the Iowa court will apply the Illinois exemption laws to such wages. *Mason* v. *Beebee*, 44 Fed. Rep. 556 (Ia.).

COPYRIGHT — DRAMATIZING A NOVEL. — An action was brought by executors of A, to restrain the defendant from representing a certain drama in infringement of the plaintiff's stage copyright. A had first published a novel, and afterwards had published a dramatized version of his own novel. The defendant's drama was dramatized directly from the novel, after the publication of the dramatized version by A, but not with the help of his version. *Held*, that A having published the novel before the drama, any person had a right to dramatize the novel and represent the drama, and that therefore the action failed. *Schlesinger* v. *Bedford*, 68 L. T. N. S. 762 (Eng.).

A like action was also brought in the following case: A had first published a drama, and afterwards a novel founded on it. The defendant's drama was dramatized directly from the novel, and not with the help of A's drama. *Held*, that A having published the drama before the novel, no one had the right to infringe the stage copyright in the drama, even though the passages complained of were taken from the novel and not from the drama of the author. *Schlesinger* v. *Turner*, 63 L. T. N. S. 764 (Eng.).

CORPORATIONS — NOT PERSONS — INTERPRETATION OF CONTRACT. — A lease of land, with an iron furnace and a mill, and certain water-rights for purpose of working the same, contained a covenant on the part of lessees not to assign or underlet without consent in writing of the lessors, "such consent not to be unreasonably refused, or refused to a person of responsibility and respectability." The lessees agreed with the corporation of a borough to assign to them, and the corporation agreed with the lessees not to use the water-rights for manufacturing iron or steel. The lessors refused to consent to the assignment, on the ground that the corporation could not use the premises for the purposes for which they were intended. *Held*, that the corporation was not, under the terms of the lease, "a person of responsibility and respectability," within the meaning of the covenant therein, and that the consent had not been unreasonably withheld. *Harrison, Ainslie, & Co.* v. *Corporation of Barrow-in-Furness*, 39 W. R. 250 (Eng.).

DAMAGES — PUNITIVE DAMAGES NOT ALLOWED. — In Washington punitive damages cannot be recovered for personal injuries, however occasioned. *Spokane Truck & Dray Co.* v. *Hoefer*, 25 Pac. Rep. 1072 (Wash.).

DAMAGES — REPLEVIN. — In an action of replevin for a race-horse, all damages sustained by reason of the detention may be recovered. But fines incurred to certain racing associations for failure to race the horse during the period of detention, which the plaintiff was obliged to pay before he was permitted to race the horse again, cannot be recovered. *Riley* v. *Littlefield*, 47 N. W. Rep. 576 (Mich.).

DAMAGES — TELEGRAPH COMPANIES — MENTAL SUFFERING. — The receiver of a telegraphic message, the delivery of which has been negligently delayed by the telegraph company, cannot recover damages for mental suffering alone, unaccompanied with other injury. *Chase* v. *W. U. Tel. Co.*, 44 Fed. Rep. 554.

This case is opposed to the growing tendency of the courts to allow damages for mental suffering. There would seem to be no reason why, since the law protects mental security, damages for mental suffering should not be given. See *Wadsworth* v. *Tel. Co.*, 86 Tenn. 695, *contra*.

EQUITY — COMBINATION IN RESTRAINT OF TRADE. — The defendant sold his bakery business to the complainant corporation, and was employed by the corporation to continue the business as agent of the corporation. After operating under this arrangement for a time, the defendant repudiated the sale, resumed possession under the old firm-name, and refused to account to the complainant. The bill was brought for an injunction, an accounting, and for a receiver, pending the suit. The complainant was practically a "trust," organized to monopolize the business, and had secured control of thirty-five leading bakeries in twelve different States. *Held*, that while a case was made for a receiver, pending litigation, between ordinary parties, the prayer would be denied, as equity would not encourage a combination in restraint of trade, and probably illegal, under Act Cong. July 2, 1890. *American Biscuit Co.* v. *Klotz*, 44 Fed. Rep. 721.

EQUITY — PAROL CONTRACT TO CONVEY LAND — ENFORCEMENT. — Plaintiff, the mortgagee of land owned by defendant and another, orally agreed with defendant to relinquish his mortgage, and then together to acquire the interest of the other owner. Plaintiff performed his part by relinquishing his mortgage; but the defendant acquired title to the whole land, and conveyed. *Held*, that equity, though it cannot enforce the oral contract, will restore the *status quo ante* by reviving the mortgage as against defendant, and a purchaser from him with notice. *Mitchell* v. *Graham*, 8 So. Rep. 646 (Miss.).

EVIDENCE — WITNESS — ASSIGNMENT OF A CHOSE IN ACTION. — A married woman, having a claim for damages against the defendant company, assigned all her interest in the claim to a third party. *Held*, that in a suit brought by such third party against the defendant company in the name of the married woman, the husband would be a competent witness, although he was incompetent so long as his wife had an interest in the suit. *Railroad Co.* v. *Read*, 12 S. E. Rep. 395 (Va.).

MORTGAGES — SUBROGATION. — Though a mortgage of a wife's separate estate, given to secure the payment of a debt of her husband, is invalid in South Carolina, yet, where part of the money raised by such a mortgage is used to pay off a prior valid mortgage, the second mortgagee will be subrogated to the rights of the prior mortgagee, and may enforce his mortgage to that extent. *People's Nat. Bank* v. *Epstin et al.*, 44 Fed. Rep. 403.

NEGLIGENCE — CONTRACTUAL RELATION — NO LIABILITY TO STRANGER. — A builder contracted with a company for the construction of a building to be used as a hotel, and on completion it was turned over to, and accepted by, the company. But owing to negligent construction, there is a latent defect which results in injury to the plaintiff, who is a guest at the hotel. *Held*, that the contractor is not liable in tort to the plaintiff, since his only duty is to the company. *Cartain* v. *Somerset*, 21 Atl. Rep. 244 (Pa.).

NEGLIGENCE — CONTRACTUAL RELATION — NO LIABILITY TO STRANGER. — Where there is no contractual relation between a mortgagee of property and the valuer on whose valuation the mortgagee has relied, the valuer is not liable to the mortgagee in damages by reason of the valuation having been made without due skill and care. An action in such a case could not succeed except as an action for deceit, in which case it would be necessary to show fraud. *Scholes* v. *Brooks*, 63 L. T. N. S. 837 (Eng.).

REAL PROPERTY — CONTRACT FOR PURCHASE. — Where there is a contract for the absolute sale of land, though a note given for the first instalment of the

price recites that it is given in part payment for rent, yet upon default of payment at maturity, the contract of purchase is not terminated, and the relation of landlord and tenant is not substituted for it. *Quetermous* v. *Hatfield*, 14 S. W. Rep. 1096 (Ark.).

REAL PROPERTY — EMINENT DOMAIN — CONDEMNATION OF LEASEHOLD. — Where part of a tract of land subject to a lease is condemned for public use, the tenant's liability for rent is not affected thereby. *Stubbings* v. *Village of Evanston*, 26 N. E. Rep. 577 (Ill.).

REAL PROPERTY — GRANTS UNKNOWN TO GRANTEES. — A childless widower bought various pieces of land, and made mortgage loans with his own money, but had the deeds and notes run to his wife's relatives, whose agent he claimed to be, although they knew nothing of these transactions at the time. He kept the deeds unrecorded, and always paid taxes in the names of the grantees, expressing frequently his intention that the property should go to such grantees at his death. *Held*, in a suit brought by the heirs, that although the grantor had the rents during his life, the fact that the grantees after his death recorded said deeds, and claimed to own the land, was such ratification of the agency as to constitute the delivery to him effectual to pass the legal title to them. *Cook et al.* v. *Patrick et al.*, 26 N. E. Rep. 658 (Ill.).

REAL PROPERTY — PERCOLATING WATER — NEGLIGENCE. — A gas company, in sinking a well, penetrated two strata in which water was percolating. In the lower stratum the water was salt; in the upper, the water was fresh and fed the wells of the neighborhood. In consequence of the failure of the defendant's contractor to take suitable precautions, the water from the lower stratum rose and mingled with the water in the upper stratum, and spoiled the wells of the neighborhood. *Held*, that a well-owner could recover damages for the pollution of his well, and that the company was also liable for negligence in failing to take precautions necessary to prevent such an occurrence. *Collins* v. *Chartiers Valley Gas Co.*, 21 Atl. Rep. 147 (Pa.).

TAXATION — NATIONAL BANKS — DIVIDENDS. — Act Cong. June 30, 1864, § 120, required all banks to make a sworn return of the dividends declared and of the taxes due thereon. *Held*, such return is conclusive as to the liability of the bank. It cannot avoid paying the tax by showing that, owing to the undiscovered embezzlement by its cashier, there were no earnings for the year, and that the dividends were, in fact, paid out of the capital. *Central Nat. Bank* v. *United States*, 11 Sup. Ct. Rep. 126.

TORTS — ARREST BY OFFICER WITHOUT A WARRANT. — *Held*, that a breach of the peace was committed in the presence of an officer, when it was so near to him that he could hear what was said and the sound of blows, although it was too dark for him to see what was done. *State* v. *McAfee*, 12 S. E. Rep. 435 (N. C.).

TORT — PROCURING BREACH OF CONTRACT. — Plaintiffs made an agreement with W., whereby he sold, and agreed to deliver, to plaintiffs a certain crop of tobacco. Defendant, on account of ill-will which he bore to one of plaintiffs, maliciously, with intent to injure plaintiffs and to benefit himself, induced W. to break his contract with plaintiffs, and to sell the tobacco to defendant and his partner. *Held*, following the reasoning of Coleridge, J., in *Lumley* v. *Gye*, 2 El. & Bl. 216, that defendant was not liable, and that plaintiffs' only remedy was an action *ex contractu* against W. Also that an act lawful in itself cannot become actionable solely because it was done maliciously. *Chambers et al.* v. *Baldwin*, 15 S. W. Rep. 57 (Ky.).

TORT — PROCURING BREACH OF CONTRACT. — Appellants contracted with a certain actress, whereby she agreed to play at their theatre. Appellee maliciously, with intent to injure appellants, induced the actress to break her contract with appellants, and to play at his theatre. *Held*, following *Chambers* v. *Baldwin*, 15 S. W. Rep. 57, that appellee was not liable, and that, although there was a statute in Kentucky prohibiting the procuring of breaches of contracts by laborers, still that statute was not intended to include contracts for performances of dramatic artists. *Boulier et al.* v. *Macauley*, 15 S. W. Rep. 60 (Ky.).

This case and that of *Chambers* v. *Baldwin*, *supra*, show the unwillingness of the courts of one of the jurisdictions of this country to follow the rule laid down by the majority of the court in *Lumley* v. *Gye*, 2 El. & Bl. 216.

TROVER — RETURN OF CHATTEL — DAMAGES. — An action for the wrongful conversion of a certificate of stock cannot be continued, after the return of the certificate to the plaintiff and his acceptance thereof, to recover damages for his time, trouble, and expense in obtaining it, as the extinguishment of the conversion carries with it the damages resulting therefrom. *Collins* v. *Lowry*, 47 N. W. Rep. 612 (Wis.).

TRUSTS — CONTRACT FOR SALE OF LAND — RIGHT OF VENDEE. — The plaintiff contracted with the defendant for the sale of land. Before the deed was delivered to the plaintiff the land was taken by a railroad company under the right of eminent domain. *Held*, that the plaintiff must pay to the defendant the contract price of the land; and that he would be entitled to recover condemnation damages from the railroad company. *Gammon* v. *Blaisdell*, 25 Pac. Rep. 580 (Kan.).

TRUSTS — CONVEYANCE TAKEN BY AGENT — STATUTE OF FRAUDS. — *Held*, if a principal employs an agent by parol to purchase property, and the agent purchases in his own name, with his own money, and takes a conveyance to himself and denies the agency: to an action by the principal against the agent, seeking a conveyance to himself, section 7 of the Statute of Frauds still affords a good defence. *James* v. *Smith* [1891], 1 Ch. 384 (Eng.).

This decision is opposed to the doctrine generally accepted in America, that this is a constructive trust, and the statute has no application. See *Rose* v. *Hayden*, 36 Kan. 106; but see *Burden* v. *Sheridan*, 36 Ia. 125, *contra*.

It is also opposed to what has been thought to be the law in England; the case of *Bartlett* v. *Pickersgill*, 4 East, 577, which it follows, having been treated as overruled.

TRUSTS — VOLUNTARY SETTLEMENT. — By a voluntary deed of settlement containing full powers of attorney to collect and sue, P. assigned to M. four specialty debts secured by bills of sale. There was no express assignment of the bills of sale, or of the goods comprised therein. Before his death P. received payment of these debts. *Held*, M. could prove against P.'s estate for the amount of these debts. *In re Patrick* [1891], 1 Ch. 82, Ct. of App. (Eng.).

REVIEWS.

A TREATISE ON THE LAW OF JUDGMENTS, INCLUDING THE DOCTRINE OF RES JUDICATA. By Henry Campbell Black. In two volumes. St. Paul, Minn.: West Publishing Co., 1891. 8vo. pp. xcii and 1270.

This book is the latest, largest, and — we feel safe in saying — is destined to become the most satisfactory to the profession, of all the present treatises on this general subject. The work gives evidence throughout of accurate and exhaustive research. It is, first and foremost, a practical book of reference, with a copious and well-ordered index. The chief object is to state the law as it is, and not as it has been or should be. The growth of a particular doctrine is traced only when necessary to explain a present conflict of authority — as in the discussion of the Conclusiveness of Foreign Judgments. Where the law in the different States is in square conflict, the author's conclusions are stated boldly, and well supported, but not at excessive length, an admirable sense of proportion being shown in all parts of the book.

Especially commendable is the treatment of the difficult subject of Estoppel by Record, in which, as the preface states, "the apparent confusion arises, not so much from any real contradiction or obscurity in the authorities, as from the infinite variety exhibited in the facts of the different